

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID**

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 12143 of 2004(S)

PETITIONER: APPLICANT

**ASIA A.M., D/O. SRI.MOOSAN A.A.,
AGED 37 YEARS, POSTMAN, KIZHAKKAMBALAM,
ALUVA POSTAL DIVISION, RESIDING AT ELAVUMKUDY
MUCHETHU, NORTH PONJASSRY P.O.,
KUNNATHUNAD TALUK, ERNAKULAM DISTRICT.**

**BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SRI.ANTONY MUKKATH**

RESPONDENTS: RESPONDENTS

- 1. DIRECTOR GENERAL OF POSTS,
DAK BHAVAN, NEW DELHI.**
- 2. CHIEF POSTMASTER GENERAL, KERALA CIRCLE,
TRIVANDRUM.**
- 3. SENIOR SUPERINTENDENT OF POST OFFICES,
ALUVA DIVISION, ALUVA 683 103.**
- 4. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF COMMUNICATIONS, NEW DELHI.**
- 5. CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH.**

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 12143/2004

APPENDIX

PETITIONER'S EXHIBITS.

EXT.P1. COPY OF THE OA NO. 708/2002 ALONG WITH ANNEXURE OF THE CAT, ERNAKULAM DT. 3/10/02.

EXT.P2. COPY OF THE REPLY STATEMENT OF THE RESPONDENTS TO 1 TO 4 OA NO. 708/2002 DT. 21/1/03.

EXT.P3. COPY OF THE REJOINDER STATEMENT FILED BY THE PETITIONER IN OA NO. 708./2002 DT. 2/03/3.

EXT.P4. COPY OF THE ADDITIONAL REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS 1 TO 4 DT. 17/4/03.

EXT.P5. COPY OF THE ADDITIONAL REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS DT. 30/6/03.

EXT.P6. COPY OF THE ADDITIONAL REJOINDER STATEMENT IN OA NO. 708/2002 DT. 6/7/03.

EXT.P7. COPY OF THE COUNSEL STATEMENT OF RESPONDENTS IN OA NO. 708/02 DT. 9/11/03.

EXT.P8. COPY OF THE ORDER DT. 15/1/04 IN OA NO. 708/02 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P9. COPY OF THE DEPARTMENT OF POSTS (POSTAL ASSISTANTS AND SORTING ASSISTANTS) RECRUITMENT RULES, 1990-NOTIFICATION NO. 60-52/90 SPB-1 DT. 27/12/90.

RESPONDENT'S EXHIBITS NIL.

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K. BALAKRISHNAN NAIR & HARUN-UL-RASHID,JJ
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W.P.(C). NO. 12143 OF 2004

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Dated this the 23rd day of August, 2007.

JUDGMENT

Balakrishnan Nair,J

The petitioner has approached this Court challenging Ext.P8 order of the Central Administrative Tribunal in O.A. No. 708/2002 dated 15.01.2004. The petitioner filed above O.A challenging Annexure A8 letter dated 19.06.2002 produced along with it. The brief facts of the case are as follows:

2. The petitioner was a candidate, who appeared for the Departmental Examination for Lower Grade officials for promotion as Postal Assistant/Sorting Assistant during the year 2001, conducted on 22.04.2001. He belongs to Muslim community which is classified as one of the Other Backward Classes. Since the petitioner failed in the examination, he was not considered for promotion. He moved for revaluation of his papers. As per the result, he was qualified only for Paper I and failed for papers II and III. By Annexure A8 in Ext.P1, the applicant was informed that upon re-totalling and re-verification, the marks awarded to him in papers II and III are found correct. During the pendency of the OA, a copy of which is produced as Ext.P1, challenging the said order, the C.A.T passed an order, which in fact is

an order for revaluation. In compliance with the order, the answer books of papers II and III were again examined and it was found that the petitioner could get pass marks for paper II. But, deficiency in the marks for paper III continued even after that. In the O.A. the petitioner prayed for quashing Annexure A8. He has sought for a declaration that the relevant rule in the P&T Manual, which prohibits revaluation, is ultra vires. He also prayed for revaluation of papers II and III. He also claimed that the qualifying standards for OBC candidates should be relaxed for promotion. The respondents resisted the application by filing Ext.P2 reply statement. It was followed a few rejoinders and additional reply statements. The Tribunal, after hearing both sides, dismissed the application. By Ext.P8 order, all the prayers of the petitioner were rejected. Hence, this O.P challenging Ext.P8.

3. The learned counsel for the petitioner mainly raised 3 points before us. The first point is that he is entitled to get an order for revaluation and the rule which stands in the way of revaluation is liable to be declared as ultravires and unconstitutional. The 2nd point raised is that being an OBC candidate, he is entitled to get relaxation in marks. Thirdly, it is contended that the fixation of cut off mark for the test is not proper. This submission is made relying on the decision

reported in **State of Punjab v. Manjit Singh** (2003(11) SCC 559).

4. We heard the learned counsel for the respondents also. In fact, the petitioner's answer sheets were revalued and he was granted pass marks for IInd paper also. Even after revaluation he did not get the minimum 40% marks for the 3rd paper. However, the rule prohibiting revaluation is valid, going by the principles laid down by the Apex Court in **Maharashtra S.B.O.S & H.S. Education v. Paritosh** (AIR 1984 Supreme Court 1543). The claim of the petitioner for OBC relaxation is not supported by any constitutional provisions or statutory rules or office memorandum. The relaxation of standards for OBC is permissible only at the stage of initial recruitment to the public service. Only the members of the S.C/S.T are granted the benefit of relaxation at the time of promotion. In support of his claim, the petitioner relied on Annexure A2 in Ext.P1. But the respondents have produced the full text of the relevant office memorandum dated 13.10.1994, as amended by O.M dated 25.01.1994. The petitioner has filed a reply affidavit challenging the said stand of the respondents. But, we feel that the said challenge is made without any bonafides. Annexure A2 in Ext.P1 speaks of relaxation in written examinations and interview for OBC candidates. It applies only for

direct recruitment. There is, normally no written test and interview for promotion. Article 16(4A) of the Constitution of India permits relaxation of standards for promotion only to SC and ST and not to other backward communities. Therefore, the claim of the petitioner in this regard is plainly untenable.

5. The third point raised regarding the cut-off marks relying on the decision of the Apex Court in **State of Punjab v. Manjit Singh** (2003(11) SCC 559) also cannot be accepted. The said decision is concerned with the cut-off mark fixed in competitive examinations. A candidate may have the prescribed qualifications for a post. But if the number of applicants is in excess of the number of vacancies, the best persons among them have to be identified. For that, a written examination is to be held. From the candidates who have taken the written examination, the persons ranking at the top are entitled to be considered for the promotion irrespective of the marks scored by them. The said concept has nothing to do with the departmental examination. The very concept of examination pre-supposes the fixation of minimum marks for a pass in it. In this case, it was 40%. The petitioner got only 33% for the IIIrd paper. So he was not considered eligible for promotion. If the claim of the petitioner is

accepted, when there are sufficient number of vacancies, a candidate who got only 1% mark has also to be considered for promotion. Such an interpretation will run counter to the concept of departmental examination. Thus, all the contentions raised by the petitioner are plainly untenable and accordingly the writ petition is dismissed.

K. BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

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